

**REGULAR STATE CREDIT UNION BOARD MEETING  
HELD BY CONFERENCE CALL  
OFFICE OF THE COMMISSIONER  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
2000 SCHAFER STREET, SUITE G  
BISMARCK, NORTH DAKOTA**

**March 3, 2006**

The regular meeting of the State Credit Union Board was called to order by Chairman Karsky in the Office of the Commissioner, Department of Financial Institutions, 2000 Schafer Street, Suite G, Bismarck, North Dakota, at 9:35 a.m., Friday, March 3, 2006.

MEMBERS PRESENT: Timothy J. Karsky, Chairman (*Office*)  
Paul Brucker, Member (*Office*)  
Judy A. Millar, Member (*Fargo*)  
Melanie Stillwell, Member (*Williston*)  
Steven S. Tonneson, Member (*Minot*)

MEMBERS ABSENT: None

ALSO PRESENT: Suzette Richardson, Acting Secretary (*Office*)  
Jim Laidlaw, Chief Examiner – Credit Unions (*Office*)  
Corey Krebs, Financial Institutions Examiner (*Office*)  
Todd Van Orman, Financial Institutions Examiner (*Office*)  
Kermit Larson, North Dakota Credit Union League (*Office*)  
Rodger Denny (*Minot*)  
Tim Brown (*Edgeley*)

**APPROVAL OF ACTING SECRETARY**

Chairman Karsky indicated that Suzette Richardson would be Acting Secretary due to the absence of Assistant Commissioner Entringer.

**It was moved by Member Millar, seconded by Member Tonneson, and unanimously carried to approve Suzette Richardson as Acting Secretary.**

## **APPROVAL OF MINUTES**

Chairman Karsky indicated the Board received copies of the minutes of the regular meeting held on December 14, 2005.

Member Stillwell noted that on page 41 of the minutes, the motion at the bottom of that page should be changed to read, “the motion carried by a vote of 4 to 0, with Member Millar absent”.

**It was moved by Member Brucker, seconded by Member Stillwell, and unanimously carried to approve the minutes as amended.**

## **APPLICATION TO ESTABLISH A BRANCH BY TOWN AND COUNTRY CREDIT UNION, MINOT**

Rodger Denny, President of Town and Country Credit Union, Minot, was added to the conference call at 9:40 a.m.

Chairman Karsky reviewed Assistant Commissioner Entringer’s Memorandum dated February 23, 2006, noting the application to establish a branch at 3630 South Broadway, Minot, was received on December 16, 2005, and notice was published in the *Minot Daily News* the week of January 23, 2006, with the comment period expiring February 28, 2006. No comments were received concerning the application.

Chairman Karsky noted the branch is located within the credit union’s current field of membership and there is no proposal to expand its field of membership at this time.

Chairman Karsky indicated North Dakota Century Code Section 6-06-06(9) states a credit union may invest in a credit union office building including the lot, piece, or parcel of land in which the same is located and in furniture and fixtures to the extent authorized by regulations issued by the State Credit Union Board. Section 6-06-06(11) states that a credit union may engage in any activity in which they could engage if they were federally chartered.

Chairman Karsky indicated that Section 13-03-15-04(a) of the North Dakota Administrative Code states that approval to establish the branch must be given by

the Board of Directors of the credit union; the credit union's Board of Directors approved the branch application on December 12, 2005.

Chairman Karsky indicated that Section 13-03-15-04(b) states that after the credit union's Board of Directors approved the application they must submit an application to establish the branch to the Department of Financial Institutions; the application was received on December 16, 2005.

Chairman Karsky indicated that Section 13-03-15-04(c) states the credit union shall at least 30 days prior to the date of consideration by the State Credit Union Board cause to be published a Notice in the official newspaper of the county or counties affected by the proposed branch expansion. The Department sent Notice of the application to be published in the *Minot Daily News*.

Chairman Karsky indicated Section 13-03-15-04(2)(a) states that if the branch is for an open charter and if the application to establish the branch is accompanied by an application to expand the field of membership, the exact geographical boundaries, expressed by city, county, township, or highway boundaries, or a stated radius from the branch office, must be clearly spelled out. There is no application to expand the field of membership and the credit union's current field of membership is individuals residing within a seventy five (75) mile radius of Minot.

Chairman Karsky indicated that Section 13-03-15-04(2)(b) states the credit union must address the negative impact to any other state or federally-chartered credit union in North Dakota. The Department has not received any opposition or comment from other credit unions in the area.

Chairman Karsky referred to a letter the Department received from Rodger Denny, President of Town and Country Credit Union, Minot, dated December 16, 2005, in which he indicates the credit union is not aware of any credit union providing services in that area. President Denny stated in his letter, "As Minot is expanding to the south, we believe there is a need to better serve the residents of south Minot. Also, we have a strong base of agricultural members who live south of Minot and we do not believe there would be a negative impact to any state or federally-chartered credit union."

Chairman Karsky indicated that Section 13-03-15-04(2)(c) states the credit union should consider the express need in the branching area. The application

indicates the branch will provide additional services to those residents in south Minot and to agricultural customers located south of Minot.

Chairman Karsky indicated that Section 13-03-15-04(2)(d) provides the State Credit Union Board should consider any expressed opposition to the branch by any other credit union in North Dakota. The Department has not received any opposition concerning the branch.

Chairman Karsky indicated that Section 13-03-15-04(2)(e) states that the State Credit Union Board should consider if the branch is for an open charter, whether the area being considered is satisfactorily served by a current operating credit union. As indicated, Town and Country Credit Union is not expanding its field of membership and the branch will be located in its current field of membership.

Chairman Karsky indicated that Section 13-03-15-04(2)(f) indicates the State Credit Union Board must consider whether or not the credit union has the ability to succeed with the branch. As indicated in the projections, the branch shows net loss for the first three years, but will not impact the overall condition of the credit union. Chairman Karsky also stated that Chief Examiner Laidlaw indicated he feels the branch will be a benefit to the credit union in future years.

Chairman Karsky asked President Denny if he would like to make any comments regarding his application.

President Denny this application is in consistent with the credit union's strategic initiative and long term plan, and would ask that the State Credit Union Board give this application favorable consideration.

Chairman Karsky asked where this branch would be located, and President Denny stated this branch would be located on the south side of Minot near the Wal-Mart construction and the current Pour Farm building. The branch will be located in the previous Cenex convenience store car wash building, which will be remodeled.

Member Millar indicated President Denny's December 15, 2005, letter asks that the State Credit Union Board consider the branch application at its meeting in March 2005, which should have been March 2006; and to approve the application in 2005, which should be 2006. These corrections were noted.

Member Tonneson asked if the car wash building is to the right of the Cenex convenience store, and President Denny explained the car wash building is attached to the Cenex convenience store, on the west side of the building. President Denny also stated that Edgewood Vista previously rented this same location.

Member Stillwell asked President Denny if they propose to have a drive-up at this location, and President Denny stated they are proposing in the application to allow for a drive-up facility.

Member Stillwell asked if an ag lending officer will be at this location, since the application indicates this branch will benefit agricultural members. President Denny stated that initially an ag lending officer will not be at this branch; the branch will be staffed with three persons. President Denny stated the future will determine if the credit union can afford to place an ag lending officer at this branch location; however, initially the intent is to service these customers' needs.

Member Tonneson questioned if the branch would initially operate more as a paying and receiving station, and President Denny stated this is correct.

Member Tonneson asked if there is space available for expansion in the future, and President Denny there is not much space available and any expansion would be quite costly; however, if the volume at this branch justifies expansion it would be considered.

Member Millar asked if any opposition to this branch application had been received by the Department, and Chairman Karsky stated no opposition has been received.

**It was moved by Member Stillwell and seconded by Member Millar to approve the application by Town and Country Community Credit Union, Minot, to establish a branch at 3630 South Broadway, Minot, as well as allowing Chairman Karsky to sign the proposed Order on behalf of the State Credit Union Board. The motion was unanimously carried.**

President Denny left the conference call at 9:50 a.m.

## **DAKOTA PLAINS CREDIT UNION, EDGELEY – APPLICATION TO EXPAND ITS FIELD OF MEMBERSHIP**

Tim Brown, President of Dakota Plains Credit Union, Edgeley, was added to the conference call at 9:51 a.m.

Chairman Karsky his Memorandum dated February 23, 2006, which notes the current field of membership of Dakota Plains Credit Union: “Membership in this credit union is limited to a 50 mile radius of Edgeley. A member’s immediate family is also eligible for membership. The State Credit Union Board has defined immediate family to include a spouse, child, sibling, parent, grandparent, grandchild, stepparent, stepchildren, and stepsiblings.” Chairman Karsky indicated the proposed new field of membership: “Membership in this credit union is limited to a 75 mile radius of Edgeley. A member’s immediate family is also eligible for membership. The State Credit Union Board has defined immediate family to include a spouse, child, sibling, parent, grandparent, grandchild, stepparent, stepchildren, and stepsiblings.”

Chairman Karsky stated that North Dakota Administrative Code Chapter 13-03-14 entitled Field of Membership, sets forth the parameters for a credit union to expand its field of membership. Specifically, Section 13-03-14-02 states that a North Dakota state-chartered credit union may expand its field of membership subject to the approval of the State Credit Union Board in accordance with the provisions of this Chapter and North Dakota Century Code Chapter 6-06. This Chapter states that the State Credit Union Board should consider the following criteria when approving an expansion of the field of membership:

- (a) If the expansion is for an open charter, the exact geographical boundaries, expressed by city, county, township, or highway boundaries, or a stated radius from the principal or branch office, must be clearly spelled out;

*As you will note, the new field of membership expansion is clearly spelled out and limited to a 75 mile radius from the main office.*

- (b) The negative impact to any other state or federally chartered credit union in the expanded area;

*In a letter dated December 16, 2005, from President Tim Brown, he states that as method to evaluate the negative impact to any state or federally-*

*chartered credit union in the expanded area, that he has personally called and spoken with managers at First Community Credit Union, Jamestown; Hometown Credit Union, Kulm; LaMoure Credit Union, LaMoure; and Lisbon Farmers Union Credit Union, Lisbon. All of these credit unions responded that they have no negative issues with the expansion from 50 to 75 miles.*

- (c) The expressed need in the expansion area;

*The expressed need is spelled out in the application, with a short Memorandum dated November 14, 2005.*

- (d) Any expressed opposition to the expansion by any other credit union;

*At this time, the Department has not received any letters or comments opposing the application.*

- (e) If the expansion is for an open charter, whether the area being considered is satisfactorily served by a currently operating credit union;

*In President Brown's December 16, 2005, letter he states that in regards to the area being satisfactorily served by current credit unions, he would respond that Dakota Plains Credit Union is full service credit union offering a full array of financial products and services. It is not uncommon for members of a neighboring credit union to use Dakota Plains Credit Union for a specific service such as a VISA card.*

- (f) The credit union must demonstrate the ability to succeed in expanding their field of membership;

*Because the credit union is a currently operating credit union, the expansion to a 75 mile radius should not have any additional expense to the credit union.*

- (g) Relevant public comment in favor of or in opposition to expanding the field of membership.

*As of this date, the Department has not received any comment relative to this application; however, Marilyn Foss, General Counsel for the North Dakota Bankers Association has requested a copy of the application.*

- (h) Any other factor that the state credit union board deems pertinent.

Chairman Karsky indicated that North Dakota Administrative Code Section 13-03-14-03 sets forth the application requirements in order for a credit union to expand its field of membership:

1. Approval to expand the field of membership must be given by the board of directors of the credit union by a majority of that board.

*This approval was given on August 15, 2005.*

2. After approval by the credit union's board of directors, application must be made to the state credit union board to expand its field of membership.

*The Department received the application to expand the field of membership on November 16, 2005.*

3. The application to expand the field of membership must be accompanied by the necessary documents for amendment of bylaws as required by North Dakota Century Code Section 6-06-04.

*The Amendment of Bylaws form is attached to the application.*

4. The credit union shall, at least thirty days prior to the date of consideration by the state credit union board of an open charter application, cause a notice of the proposed field of membership expansion to be published in the official newspaper of the county or counties affected by the proposed charter expansion.

*Notice of the application was published in the Ransom County Gazette, The LaMoure Chronicle, Foster County Independent, Valley City Times-Record, Emmons County Record, Steele-Ozone Press, Griggs County Sentinel-Courier, Jamestown Sun, The Forum, and The Teller. The Department has given proper notice of the field of membership application.*



5. The notice must specify the time and place of the meeting of the state credit union board at which the application for the charter expansion will be acted upon. Comments may be submitted to the board concerning the application, or a written request for an opportunity to be heard before the board may be submitted. The board may, when it believes it to be in the public interest, order a hearing to be held.

*The notice of application did contain this information.*

Chairman Karsky noted at the last regularly scheduled State Credit Union Board meeting in December 2005, the State Credit Union Board set precedence on whether or not immediate family could be added to an existing field of membership when a credit union expands an additional 25 miles or to the 75 mile radius. Chairman Karsky stated it would seem prudent that the State Credit Union Board be consistent with its past action and hopefully will discuss this issue in regards to this application.

Member Brucker stated he feels the State Credit Union Board needs to clarify if precedence was determined by the Board on whether or not immediate family could be added to an existing field of membership when expanding to the 75 mile radius. Member Brucker stated he does not feel precedence has been set, as the two credit unions that received approval to expand their field of memberships at the December 2005 meeting amended their applications to remove “immediate family” from their applications prior to State Credit Union Board action.

Member Tonneson asked Chairman Karsky to refresh the Board on the changes made to the two expansion of field of membership applications before the Board at the December 2005 meeting. Member Tonneson continued he believes the intent of the Board was established during that meeting, in accordance with advice received from Assistant Attorney General Miller, North Dakota Bankers Association General Counsel Marilyn Foss, and Counsel for the North Dakota Credit Union League Greg Tschider.

Chairman Karsky indicated that the wording of the bylaws of Capital Credit Union, Bismarck, now states: Membership in this credit union is limited to organizations and persons living within a 50 mile of the credit union’s home office in Bismarck and their immediate families, and those who reside within an area between a 50 mile radius and a 75 mile radius of the home office of Bismarck.

Chairman Karsky indicated he had several conversations with President Brown prior to this meeting, and explained that General Counsel Foss expressed her feelings that the State Credit Union Board had set precedence that the 50 to 75 radius would not include immediate family. Chairman Karsky stated he indicated to General Counsel Foss he anticipated this field of membership application would be amended; which is why he believes General Counsel Foss has not objected to this application.

President Brown explained the opportunity to expand the field of membership from the 50 mile radius to a 75 mile radius gives the credit union the opportunity as an agricultural credit union to reach out to additional members. He indicated there is no debate that this proposed area is currently served by several credit unions; however, some of them are in no way as fully serviced as Dakota Plains Credit Union, therefore members of these other credit unions have in the past used services offered by Dakota Plains Credit Union. President Brown continued Dakota Plains Credit Union has the financial resources and staffing necessary to serve more members without any negative impact to the credit union.

Chairman Karsky stated President Brown had indicated the current membership of Dakota Plains Credit Union is 2,504, and the estimated number of potential members that could be added after the expansion would be 9,500. President Brown indicated that is correct and stated that estimation is made when looking at the population within that service area.

Member Tonneson asked President Brown if the credit union is anticipating establishing a branch in the future, and President Brown stated that option would be researched if there was a request to bring a branch into a rural area.

Member Stillwell asked if this expansion would reach a larger city, due to the fact the projection of possible membership could reach 9,500. President Brown explained the credit union's current 50 mile radius basically runs to the south side of Jamestown; therefore, the 75 mile radius expansion would expand the field of membership to include the city of Jamestown.

Chairman Karsky indicated the new law states the 75 mile radius is of a credit union's home office; therefore the Amendment to the Bylaws submitted by Dakota Plains Credit Union would need to be amended to indicate "home office" instead of "Edgeley". President Brown agreed with this amendment.

Member Tonneson stated he understands the application would need to be amended to indicate a member's immediate family is also eligible for membership only within the 50 mile radius of the home office; and the additional membership would include members who reside within an area between a 50 mile radius and a 75 mile radius of the home office of Edgeley. Chairman Karsky indicated that is correct.

Member Tonneson asked President Brown if this membership correction would work for Dakota Plains Credit Union, and President Brown stated he does not see this being a huge impact either way, if there is an agreed upon consensus that has already been reached by the State Credit Union Board. President Brown continued that he respects Member Brucker's opinion that it was due to objections that other credit union's amended their applications to expand field of membership.

Member Brucker asked President Brown if it is his intention to submit his application as written, including immediate family, and President Brown stated certainly.

Chairman Karsky stated since there was opposition to previous expansion of field of membership applications presented to the Board in December 2005, he believes the State Credit Union Board did set precedence at that meeting; therefore, he would vote against the field of membership expansion as presented by Dakota Plains Credit Union.

It was pointed out that Capital Credit Union, Bismarck; Elm River Credit Union, Page; North Star Community Credit Union, Maddock; and Dakota West Credit Union, Watford City, had all amended their applications to expand field of membership to separate a member's immediate family from the 75 mile radius.

Member Tonneson indicated he believes there is a consistency issue before the State Credit Union Board.

Member Brucker stated with the issues discussed today, precedence is being set by the State Credit Union Board.

Chairman Karsky read the exact wording of Section 6-06-07 for the Board, which states "Credit union membership is limited to groups have a common bond of occupation or association or to groups residing within a geographic area that does not extend beyond a 75 mile radius of the home office of the credit union. Except

as provided by this Section, an office of the credit union that has a field of membership defined by geography may not be located more than 75 miles from the credit unions main office. The restrictions on location and fields of membership under this Section do not apply to credit union office location or field of membership approved by the Board before January 1, 2005.”

Chairman Karsky explained the discussion at the December 2005 meeting was that authority was not given anywhere within the North Dakota Century Code to give a credit union the authority to have immediate family members. Chairman Karsky stated that Dakota Plains Credit Union’s membership was set at a 50 mile radius, and in using the new law to expand that field of membership, it is limited to a 75 mile radius. Chairman Karsky also stated if a new credit union opened today, it would be allowed the 75 mile radius without immediate family members.

Chairman Karsky further explained the new law allows the old membership of Dakota Plains Credit Union to include family members within the 50 mile radius of the home office; however, the expansion is limited to people residing within the 50 to 75 mile radius.

Chairman Karsky asked if the Board members if they believed this to be correct and Member Tonneson agreed.

Chairman Karsky stated that Assistant Attorney General Miller indicated this could be viewed as “interpretation”, but also could be contested.

Member Brucker asked Chairman Karsky if Assistant Attorney General Miller stated he did not believe the State Credit Union Board had the authority to grant the extension of immediate family members within the 75 mile radius of the home office. Member Tonneson and Member Stillwell stated they believe this is correct.

Chief Examiner Laidlaw referred to page 41 of the December 14, 2005, minutes which explained Assistant Attorney General Miller’s interpretation.

Chairman Karsky also referred to the paragraph on page 41 of the December 14, 2005, minutes wherein Assistant Attorney General Miller stated if the Board would ask for an Attorney General’s Opinion, he would look at legislative history as well as previous Attorney General’s Opinions; however, at this point he feels the compromise does make sense to him.

Chairman Karsky stated he cannot guess how the court would rule on this issue, but that his position is he believes the State Credit Union Board has set a precedence which indicates how he will vote on this application.

Chairman Karsky stated the Board could make a motion to approve the application to expand field of membership by Dakota Plains Credit Union, Edgeley, as presented; if approval is not granted President Brown could then amend the application and the Board could revote. President Brown stated he would have no problem with this.

**It was moved by Member Tonneson and seconded by Member Millar to approve the Application to Expand Field of Membership by Dakota Plains Credit Union, Edgeley.**

Member Tonneson stated he feels if this application is approved, he believes the previous four credit unions could come back to the State Credit Union Board and ask for this same type of approval. Member Tonneson stated he is in favor of doing whatever the State Credit Union Board can as long as it is within the limits of the law, as he does not believe in restricting credit unions in any fashion. Member Tonneson concluded he does not believe the four previous credit unions would have amended their field of membership applications if they had believed the State Credit Union Board would approve them.

Member Brucker indicated he does not believe the State Credit Union Board has the authority to approve this application presented by Dakota Plains Credit Union. Member Brucker asked President Brown if he has any information indicating the Board does have the authority to approve this application, and President Brown stated he does not.

President Brown stated he respects the Board and the position it is in; however, he feels we could all invest our time and energy in more productive areas for North Dakota credit unions than to get involved in legal proceedings to have all of this defined. President Brown continued that at this time he would amend his application to proceed with the membership for a 75 mile radius of the home office, and within that 75 mile radius the first 50 miles would include immediate family, and from 50 to 75 miles would be limited to residents living in that area.

Chairman Karsky stated the Department will change Dakota Plains Credit Union's Articles of Amendment to make it consistent with what President Brown indicated above.

Chairman Karsky asked Member Tonneson if he would withdraw his motion, along with Member Millar withdrawing her second to that motion.

**Member Tonneson withdrew his motion to approve the Application to Expand Field of Membership by Dakota Plains Credit Union, Edgeley, and Member Millar also withdrew her second to this motion.**

**It was moved by Member Tonneson and seconded by Member Millar to approve the Application to Expand Field of Membership by Dakota Plains Credit Union, Edgeley, as amended.**

Member Stillwell indicated the wording has to be correct, in that we do not want to change the original field of membership wording at all, but just add on to the end the 50 to 75 mile radius from the home office.

Chairman Karsky indicated the amendment would be changed to:  
"Membership in this credit union is limited to a 50 mile radius of the home office in Edgeley, and then at the end add "Membership also includes individuals who reside within an area between a 50 mile radius and a 75 mile radius of the home office of Edgeley, North Dakota.

Member Tonneson agreed with the changes as described by Chairman Karsky.

**The above motion was unanimously carried.**

President Brown left the conference call at 10:25 a.m.

## **KERMIT LARSON**

Chairman Karsky acknowledged that this was the last State Credit Union Board meeting Kermit Larson would be attending, and thanked him for his presence at the meetings. Kermit Larson indicated he has enjoyed attending the meetings and has a lot of respect for the State Credit Union Board.

## **NEXT MEETING**

Chairman Karsky indicated the Board will consider the assessment fees at the June meeting; therefore, he would like to have the Board members come to Bismarck for that meeting.

## **NEW BRANCH OFFICE IN DICKINSON**

Member Stillwell indicated invitations are in the mail, but would like to extend an invitation to each of the Board members and the Department to attend the open house of Western Cooperative Credit Union's new branch located at 721 State Avenue, Dickinson, to be held Tuesday, March 7, 2006, from 10:00 a.m. to 4:00 p.m.

The Board went into closed session at 10:26 a.m.

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Timothy J. Karsky, Chairman

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Suzette Richardson, Acting Secretary